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BEFORE THE ARIZONA CORPORATION COMMISSION
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COMMISSIONERS:

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 JUN 24 P 3:34

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF:

DOCKET NO. S-20600A-08-0340

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;

STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;

MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;

ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;

MARK BOSWORTH & ASSOCIATES, LLC,
an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, LLC,
an Arizona limited liability company;

Respondents.

Arizona Corporation Commission
DOCKETED

JUN 24 2010

**THIRTEENTH**
PROCEDURAL ORDER

BY THE COMMISSION:

On July 3, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Mark W. Bosworth and Lisa A. Bosworth, husband and wife; Stephen G. Van Campen and Diane V. Van Campen, husband and wife; Michael J. Sargent and Peggy L. Sargent, husband and wife; Robert Bornholdt and Jane Doe Bornholdt, husband and wife; Mark Bosworth & Associates, LLC ("MBA"); and 3 Gringos Mexican Investments, LLC ("3GMI") (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of notes and investment contracts.

Respondents were duly served with copies of the Notice. Requests for hearing were filed by all Respondents except 3GMI.

1 On August 18, 2009, at a status conference, the Division, the Van Campen Respondents, and
2 the Sargent Respondents were present with counsel. Mr. Bosworth was present on his own behalf
3 and indicated Mrs. Bosworth would be retaining her own attorney. Counsel for the Division
4 indicated that the Bornholdt Respondents' counsel would not be present because they are attempting
5 to resolve the issues that had been raised in the Notice. After a discussion between the parties, it was
6 determined that a hearing should be scheduled in approximately six months.

7 On August 21, 2009, by Procedural Order, a hearing was scheduled to start on March 15,
8 2010.

9 On February 19, 2010, the Sargent Respondents filed a Motion to Set Settlement Conference
10 and for the Appointment of a Settlement Judge.

11 On February 24, 2010, the Division filed a response arguing that it does believe that a
12 settlement conference will facilitate a settlement with respect to the Sargent Respondents.

13 On February 25, 2010, the Sargent Respondents filed a reply to the Division's response citing
14 the use of settlement judges in both the Superior and Federal Courts, and further argued the need to
15 resolve issues efficiently and economically.

16 On March 1, 2010, by Procedural Order, a status conference was scheduled to review this
17 matter on March 4, 2010.

18 On March 4, 2010, at the status conference, the Division and Mr. Sargent appeared with
19 counsel. Mr. Bosworth appeared on his own behalf and on behalf of MBA and 3GMI. The parties
20 indicated that there are ongoing discussions to resolve the issues that had been raised in the Notice,
21 but that certain matters need to be resolved to conclude their possible settlements in this proceeding.
22 It was further indicated that a brief continuance would facilitate the complete resolution of the
23 proceeding by the parties and the submission of proposed Consent Orders for Commission approval.
24 The Sargent Respondents' counsel pointed out that if he and the Division could not resolve their
25 remaining issues for his clients in 30 days, that he might renew his Motion for the Appointment of a
26 Settlement Judge. At the conclusion of the status conference, the parties agreed to the proceeding
27 being continued to the agreed upon dates in June, if the proceeding was not settled.

28 On March 5, 2010, by Procedural Order, the proceeding was continued to June 7, 2010.

1 On April 28, 2010, the Sargent Respondents filed a Motion to Sever the Commission's
2 proceeding against them from the overall proceeding against the Bosworth Respondents, MBA and
3 3GMI because the Sargents argue that a separate proceeding for them would be simpler and less
4 complex. Further, they argue that severance will promote judicial economy, reduce the risk of
5 prejudice and reduce the economic burden on the Sargents.

6 On May 3, 2010, Respondent Mark W. Bosworth filed his Exhibit and Witness Lists.
7 Additionally, he filed copies of subpoenas to the Commission, the Arizona Department of Real Estate
8 and the Arizona Republic/Republic Media. The subpoenas requested voluminous amounts of
9 documentary information from all three entities without stating any reason for this action.

10 On May 10, 2010, the Division filed Objections and a Motion to Quash Respondent
11 Bosworth's subpoenas. In its response, the Division cited numerous legal arguments including that
12 the requested information sought is overbroad, unduly burdensome, untimely and unnecessary.
13 Further, the Division argued that Respondent was attempting to delay the proceeding beyond the
14 pending hearing date.

15 On May 12, 2010, the Division filed its Response to the Sargent Respondents' Motion to
16 Sever arguing that if it is approved, the matter would be duplicative, wasteful, and that similar
17 evidence would have to be presented if the proceedings were severed.

18 On May 13, 2010, the Sargent Respondents filed a Reply in Support of their Motion to Sever
19 essentially restating their arguments made earlier.

20 On May 18, 2010, the Division filed its Objections and Motion to Quash the Sargent
21 Respondents' First Request for Admissions and Non-Uniform Interrogatories ("First Request") which
22 had been hand-delivered to the Division on May 3, 2010. Therein, the Division argues that the First
23 Request is not supported by fact or law. The Division further argues that the Sargent Respondents
24 "attempt to invoke far-reaching civil discovery rules in this administrative forum is misplaced and
25 must be denied."

26 On May 21, 2010, the Division filed its Objections to Respondent Bosworth's List of
27 Witnesses and Exhibits together with a Motion to Compel Production of Information Regarding
28 Witnesses and Copies of Exhibits or, If Production Is Not Made, To Preclude Admission Into

1 Evidence. The Division, in its filing, argues that it requires the information to prepare for the hearing
2 or the admission of Respondent Bosworth's witness' testimony and related exhibits should be
3 precluded from the proceeding.

4 On May 24, 2010, the Sargent Respondents filed a Response to the Division's May 18, 2010,
5 Motion to Quash citing a number of Commission actions which have found in favor of broad requests
6 for discovery and not for the denial of discovery in administrative proceedings. Additionally, the
7 Sargent Respondents cited the Division's own May 21, 2010, filing seeking discovery with respect to
8 Respondent Bosworth's List of Witnesses and Exhibits.

9 Additionally, on May 24, 2010, the Sargent Respondents filed a Motion for Expedited
10 Procedural Conference and Conditional Motion for Continuance in the event that their Motion to
11 Sever is denied.

12 On May 25, 2010, the Division filed a Motion to Allow Telephonic Testimony. The Division
13 requested approval to allow a former Respondent in this proceeding, Robert Bornholdt, to testify
14 telephonically since he will be out of town at the time the hearing is presently scheduled.

15 On May 26, 2010, the Sargent Respondents filed their Response to the Division's May 25,
16 2010, Motion arguing that the Division's Motion to Allow Telephonic Testimony should be denied
17 because he is a "central witness" whose demeanor, facial expressions and body language should be
18 observed when he testifies.

19 On May 27, 2010, the Division filed a Reply in Support of its Motion to Allow Telephonic
20 Testimony arguing further that Mr. Bornholdt's testimony will be probative and relevant and the
21 Sargent Respondents' due process rights will not be compromised.

22 On May 28, 2010, by Procedural Order, the following Orders were made: the Sargent
23 Respondents' Motion to Sever was denied; the Division's Motion to Quash the Bosworth subpoenas
24 was granted; the Sargent Respondents' First Request was quashed; the Division's Objections to
25 Respondent Bosworth's List of Witnesses and Exhibits together with a Motion to Compel Production
26 of Information was taken under advisement; the Sargent Respondents' Motion for Expedited
27 Procedural Conference and Conditional Motion for Continuance was denied; and the Division's
28 Motion to Allow Telephonic Testimony was granted.

1 On June 16, 2010, the Sargent Respondents filed a Motion to Quash an Administrative
2 Subpoena issued to Respondent, Michael J. Sargent. Respondents cited three reasons in their Motion
3 to Quash the subpoena. Respondent Sargent argues that the subpoena should be quashed because the
4 subpoena is "unreasonable or oppressive" because it was issued extremely late, after the hearing was
5 scheduled to start, and after the close of discovery; the Division failed to provide the required witness
6 fee; and the required subpoena application is insufficient and not even in the record.

7 On June 21, 2010, the Division filed its Response to the Sargent Respondents' Motion to
8 Quash an Administrative Subpoena. The Division argues that Respondent has been on notice since
9 as early as November 2009 that his appearance would be required at the hearing in this proceeding,
10 was personally served on February 23, 2010, and his attorney served on June 9, 2010, and as a result
11 the subpoena is not "unreasonable or oppressive." The Division cites Rule 45(b)(2) of the Arizona
12 Rules of Civil Procedure, which are applicable in court proceedings, stating that witness fees and
13 mileage allowance are not required to be paid when the subpoena orders the appearance of a party at
14 a hearing and when it is issued on behalf of a state agency as is the case here. In conclusion, the
15 Division argues that the request for the issuance of a subpoena is not an application as such and is not
16 a "Formal Document" which is required to be filed with the Commission.

17 On June 22, 2010, the Sargent Respondents filed their Reply to the Division's Response to the
18 Sargents' Motion to Quash the Administrative Subpoena Issued to Michael J. Sargent. The crux of
19 the Sargents' Reply is that Respondent Sargent will not be prepared to testify upon such short notice
20 as is provided by the subpoena served on June 9, 2010, upon Respondent Michael Sargent's counsel.
21 Respondents compare the late service of the Division's subpoena upon Mr. Sargent with other
22 subpoenas which were quashed for being untimely in this proceeding. The Respondents further argue
23 that the Division's argument that it is not required to pay witness fees pursuant to Rule 45(b)(2) of
24 the Arizona Rules of Civil Procedure "is surprising, given that it has vociferously argued that the
25 Arizona Rules of Civil Procedure don't apply in Commission proceedings" and is obviously
26 disingenuous and should not be allowed. Lastly, the Sargent Respondents renew their argument that
27 the Division's application for the subpoena for Mr. Sargent was insufficient and this constitutes an
28 additional reason to quash the subpoena.

1 Upon consideration of the arguments of the parties, the Respondents' Motion to Quash
2 Administrative Subpoena should be denied. However, the Division should comply with A.A.C. R14-
3 3-109(O) with respect to the applicable fees for witnesses if Mr. Sargent appears subject to the
4 subpoena. Additionally, Mr. Sargent should be permitted a reasonable period of time to prepare to
5 testify.

6 IT IS THEREFORE ORDERED that the Sargent Respondents' Motion to Quash an
7 Administrative Subpoena issued to Michael J. Sargent is hereby denied.

8 IT IS FURTHER ORDERED that Respondent Michael J. Sargent shall be paid the applicable
9 witness fees pursuant to A.A.C. R14-3-109(O), and further shall be allowed a reasonable period of
10 time to prepare to testify.

11 IT IS FURTHER ORDERED that the Division's Objections to Respondent Bosworth's List
12 of Witnesses and Exhibits together with a Motion to Compel Production of Information shall remain
13 under advisement.

14 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized
15 Communications) is in effect and shall remain in effect until the Commission's Decision in this
16 matter is final and non-appealable.

17 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
18 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
19 *hac vice*.


20 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
21 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
22 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation
23 to appear at all hearings and procedural conferences, as well as all Open Meetings for which the
24 matter is scheduled for discussion, unless counsel has previously been granted permission to
25 withdraw by the Administrative Law Judge or the Commission.

26 ...

27 ...

1 .IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
2 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

3 Dated this 24TH day of June, 2010.


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6 
7 MARC E. STERN
8 ADMINISTRATIVE LAW JUDGE

9 Copies of the foregoing were mailed/delivered
10 this 24TH day of June, 2010 to:

11 Mark W. Bosworth
12 Lisa A. Bosworth
13 MARK BOSWORTH & ASSOCIATES, LLC,
14 3 GRINGOS MEXICAN INVESTMENTS, LLC
15 18094 North 100th Street
16 Scottsdale, AZ 85255

17 Paul J. Roshka
18 Jeffrey D. Gardner
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21 One Arizona Center
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24 Attorneys for Respondents Michael J. Sargent
25 and Peggy L. Sargent

26 Matt Neubert, Director
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22
23 By: 
24 Debra Broyles
25 Secretary to Marc E. Stern
26
27
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